

ESTTA Tracking number: **ESTTA700722**Filing date: **10/07/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Woodbolt Distribution, LLC d/b/a Nutrabolt
Granted to Date of previous extension	10/07/2015
Address	3891 S. Traditions Drive Bryan, TX 77807 UNITED STATES
Attorney information	Craig M. Spierer Harris Beach PLLC 333 Earle Ovington Blvd., Suite 901 Uniondale, NY 11553 UNITED STATES cspierer@harrisbeach.com Phone:516.880.8379

**Applicant Information**

Application No	86171206	Publication date	06/09/2015
Opposition Filing Date	10/07/2015	Opposition Period Ends	10/07/2015
Applicant	SDC Nutrition, Inc. 528 Braddock Avenue Turtle Creek, PA 15145 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 005. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Dietary and nutritional supplements in the form of capsules and powders

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	4632534	Application Date	06/03/2014
Registration Date	11/04/2014	Foreign Priority Date	NONE
Word Mark	P6		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2001/08/12 First Use In Commerce: 2002/01/05 Dietary and nutritional supplements

Attachments	86299277#TMSN.png( bytes ) HBROC-#2646031-v2-Woodbolt_- _Opposition_to_G6_Sports.pdf(121244 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Craig M. Spierer/
Name	Craig M. Spierer
Date	10/07/2015

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 86/171,206  
Filed: October 7, 2015  
For the Mark: G6 SPORTS  
Published in the Official Gazette: on June 9, 2015

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WOODBOLT DISTRIBUTION, LLC	:
d/b/a NUTRABOLT,	:
	:
Opposer,	:      Opposition No.
	:
-against-	: <u>NOTICE OF OPPOSITION</u>
	:
	:
SDC NUTRITION, INC.,	:
	:
Applicant,	:
-----X	

Opposer Woodbolt Distribution, LLC d/b/a Nutrabolt (“Opposer”), a Delaware limited liability company with a principal place of business of 3891 South Traditions Drive, Bryan, Texas 77807, respectfully avers that it will be damaged by the registration of United States Trademark Application Serial No. 86/171,206, as filed with the United States Patent and Trademark Office (“USPTO”) on January 21, 2014 by SDC Nutrition, Inc. (“Applicant”) for the trademark G6 SPORTS in connection with “Dietary and nutritional supplements in the form of capsules and powders” in International Class 0005 (hereinafter the “G6 Sports Application”). Having been granted extensions of time to oppose up to and including October 7, 2015, Opposer hereby opposes the filing and registration of the G6 Sports Application. The grounds for opposition are as follows:

**Opposer’s Marks and Products**

1. Opposer is a well-known and highly regarded dietary and nutritional supplement company, which has been engaged in the worldwide manufacture, marketing, distribution and sale of dietary and nutritional supplements and related products since 2001 under a variety of lines including but not limited to Cellucor®, Neon Sport™, Royal Sport™ and Cavalier®. Included in the Cellucor line is a variety of products under a family of P6® trademarks (collectively, the “P6 Marks”) which have been continuously marketed, distributed and sold in commerce since on or about at least 2002.

2. Opposer is the owner of several registered and pending applications for the P6 Marks both domestically and internationally.

3. Opposer owns U.S. Registration No. 4,632,534 for P6 in standard characters for “dietary and nutritional supplements” in Class 005 (the “534 Registration”). A copy of Opposer’s valid and subsisting U.S. Registration No. 4,632,534 is attached hereto as **Exhibit A**.

4. Opposer also owns pending applications Serial No. 86/578,063 for P6 XTREME and No. 86/627,384 for P6 CHROME in standard characters for “dietary and nutritional supplements” in Class 005.

5. Opposer’s products under the P6 Marks (the “P6 Products”) are distributed throughout the world, and are readily available to consumers for purchase through its website [www.cellucor.com/products](http://www.cellucor.com/products), brick and mortar stores as well as prominent industry retailers and online retailers, including but not limited to GNC, The Vitamin Shoppe and Bodybuilding.com.

6. The P6 Products (pictured below) include but are not limited to P6 BLACK, P6 CHROME, P6 PM, P6 RED, and P6 XTREME:



**P6 BLACK**

Supported Goal: Muscle Growth  
Main Ingredient: D-Aspartic Acid  
**\$89.99**



**P6 CHROME**

Supported Goal: Muscle Growth  
Main Ingredient:  
**\$49.99**



**P6 PM**

Supported Goal: Muscle Growth  
Main Ingredient:  
**\$49.99**



**P6 RED**

Supported Goal: Muscle Growth  
Main Ingredient:  
**\$119.99**



**P6 XTREME**

Supported Goal: Muscle Growth  
Main Ingredient:  
**\$169.99**

7. The P6 Products are advertised or promoted worldwide via online as well as in traditional print publications and are prominently featured at all the major industry trade shows such as The Olympia Fitness and Performance Expo and The Arnold Sports Festival.

8. Opposer's P6 Products are widely acclaimed and have won numerous awards to cement their status. In 2013, Cellucor's P6 Black Extreme product won GNC's Best Product Innovation award.

9. Opposer has spent considerable time, money and effort developing, advertising and promoting the P6 Products. As a result of substantial sales and widespread promotion of such products, the P6 Marks have come to symbolize valuable goodwill, which belongs to Opposer. The P6 Marks have become well-known by the general public and in relevant industries and are recognized and relied upon as identifying Opposer's goods from the goods of others. As a result of Opposer's efforts, the P6 Marks have become famous within the meaning of Section 43(c) of the Lanham Act, as amended 15 U.S.C. §1125(c).

**Applicant's Mark**

10. On January 21, 2014, Applicant filed the G6 Sports Application for the mark G6 SPORTS in International Class 005 for “Dietary and nutritional supplements in the form of capsules and powders” on an intent to use basis (“Applicant’s Mark”).

11. The G6 Sports Application was filed over twelve years after the date upon which Opposer first used the mark P6 in connection with dietary and nutritional supplements in commerce. Opposer’s ‘534 Registration for P6 states a date of first use in commerce of January 5, 2002.

12. Opposer has priority because Opposer has continuously used the P6 Marks in connection with its goods prior to the date on which the Applicant filed the intent to use G6 Sports Application and before any use in commerce of the G6 SPORTS trademark by Applicant.

**Opposition Under 15 U.S.C. 1052(d)**

13. Applicant realleges and incorporates by reference the allegations contained in the previous paragraphs.

14. There is a likelihood of confusion between Applicant’s Mark and Opposer’s P6 Marks.

15. Applicant’s Mark is substantially similar in sight, sound, meaning, and commercial impression to Opposer’s P6 Marks.

16. The USPTO required Applicant to disclaim the word “SPORTS” in Applicant’s Mark because it is merely descriptive.

17. The dominant portion of Applicant’s Mark is “G6.”

18. The dominant portion of Opposer’s P6 Marks is “P6.”

19. “G6” and “P6” each are comprised of one consonant and the number 6.

20. “G” and “P” rhyme.

21. The type of goods associated with Applicant's Mark and Opposer's P6 Products are identical.

22. Applicant's Mark covers goods in Class 005, namely "Dietary and nutritional supplements in the form of capsules and powders."

23. Opposer's P6 Products are dietary and nutritional supplements, as is evidenced by the Opposer's '534 Registration for P6, which claims "Dietary and nutritional supplements" in Class 005. Opposer's P6 Products are sold in capsule form, and many other products in the Opposer's Cellucor line of dietary and nutritional supplements are sold in powder form.

24. The goods associated with Applicant's Mark and Opposer's P6 Products travel in the same trade channels.

25. The goods associated with Applicant's Mark are sold online and in GNC stores.

26. Opposer's P6 Products are sold online and in GNC stores.

27. The G6 Sports Application is not limited with respect to channels of trade, and therefore it can be presumed that Applicant will promote and distribute its goods in the same channels of trade as Opposer promotes and distributes its products under the P6 Marks.

28. Applicant's Mark and its intended use so resembles Opposer's P6 Marks and the current use thereof, that it is likely to cause confusion, mistake or deception such that consumers are likely to believe that Applicant's goods emanate from Opposer or are otherwise approved, endorsed, sponsored or affiliated with Opposer in some way. Opposer and the general public would thereby be injured by the granting of a registration for Applicant's Mark.

29. Further, the granting of a registration for Applicant's Mark would provide Applicant with at least a prima facie exclusive right to use Applicant's Mark and would therefore additionally damage and cause injury to Opposer.

30. Registration should be refused pursuant to Section 2(d) of the Trademark Act of 1946, as amended, 15 U.S.C. §1052(d), on the grounds that Applicant's Mark so resembles the P6 Marks as to cause confusion, mistake and/or deception to the detriment of Opposer.

**Opposition Under 15 U.S.C. 1125(c)**

31. Applicant realleges and incorporates by reference the allegations contained in the previous paragraphs.

32. Opposer's P6 Marks became famous prior to the filing date of Applicant's intent to use G6 Sports Application.

33. Applicant's Mark is sufficiently similar to Opposer's P6 Marks such that it would impair the distinctiveness of Opposer's P6 Marks.

34. Opposer would additionally be damaged by registration of the G6 Sports Application because the grant of such registration would cause dilution of Opposer's famous P6 Marks and will give color of exclusive statutory right to Applicant which would detract from the prior and superior rights of Opposer.

35. Applicant's Mark if registered is likely to cause dilution by blurring of Opposer's famous P6 Marks within the meaning of 15 U.S.C. 1125(c) and therefore registration should be refused.

**WHEREFORE,** Opposer believes that it will be damaged by registration of Applicant's Mark and requests that its opposition to Serial No. 86/171,206 be sustained and said registration be denied.

Dated: October 7, 2015

Respectfully submitted,

HARRIS BEACH, PLLC



By: /s/ Craig M. Spierer  
Craig M. Spierer  
Harris Beach PLLC  
333 Earle Ovington Boulevard  
Suite 901  
Uniondale, New York, 11553

*Attorneys for Opposer Woodbolt  
Distribution, LLC d/b/a Nutrabort*

## **EXHIBIT A**

# United States of America

United States Patent and Trademark Office

## P6

**Reg. No. 4,632,534**

**Registered Nov. 4, 2014**

**Int. Cl.: 5**

**TRADEMARK**

**PRINCIPAL REGISTER**

WOODBOLT DISTRIBUTION, LLC (TEXAS LIMITED LIABILITY COMPANY)  
3891 S. TRADITIONS DRIVE  
BRYAN, TX 77807

FOR: DIETARY AND NUTRITIONAL SUPPLEMENTS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 8-12-2001; IN COMMERCE 1-5-2002.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,838,845.

SER. NO. 86-299,277, FILED 6-3-2014.

CYNTHIA RINALDI, EXAMINING ATTORNEY



*Michelle K. Lee*

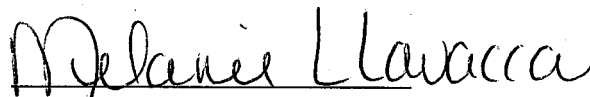
Deputy Director of the United States  
Patent and Trademark Office

**CERTIFICATE OF SERVICE**

It is hereby certified, that I am over the age of eighteen years old and not a party to this action, and that on October 7, 2015 I caused a true and correct copy of the foregoing Notice of Opposition to be served upon the Applicant's Correspondent of Record at the below address by placing is in a sealed envelope with postage thereon fully prepaid, in the United States mail:

Clay P. Hughes  
Reed Smith LLP  
PO Box 488  
Pittsburgh, PA 15230-0488

Date: October 7, 2015

  
Melanie L. Lavacca